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No. 85-1324

IN THE

SUPREME COURT

OF THE
UNITED STATES

OCTOBER TERM, 1985

WASHINGTON STATE NURSES ASSOCIATION,

Petitioner,

v.

WASHINGTON STATE HOSPITAL COMMISSION; J.C. MCCARTHY; NORMAN RAMSEY; JON D. SMILEY; ARCH LOGAN; and LINDA ZIMMERMAN,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Under § 7 of the National Labor Relations Act, 29 U.S.C. § 157, which confers upon employees the right to bargain collectively over wages, is a state agency which establishes the rates which hospitals, including those subject to the Act, may charge their patients, required:

(1) To pass through automatically into the rate schedule any and all wage increases, including increases which the agency determines to be unreasonable; and

(2) To refrain from discussing, at public meetings of that agency, the reasons for and the effects of the agency's refusal to allow such an automatic pass through?

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Court Rules:

FRCP 52 8

STATUTES INVOLVED

In addition to the provision contained on page 2 and 3 of the Petition, the following statutory provisions are also involved in this case, and are reproduced in the Appendix to this Brief:

Wash. Rev. Code § 70.39.010;
Wash. Rev. Code § 70.39.030;
Wash. Rev. Code § 70.39.100;
Wash. Rev. Code § 70.39.110;
Wash. Rev. Code § 70.39.140;
Wash. Rev. Code § 70.39.150;
Wash. Rev. Code § 70.39.160;
Wash. Rev. Code § 70.39.200.

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WASHINGTON STATE HOSPITAL COMMISSION; J.C. MCCARTHY; NORMAN RAMSEY; JON D. SMILEY; ARCH LOGAN; and LINDA ZIMMERMAN,

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RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Since as early as 1969, the legislature of the State of Washington has been attempting to stem the rapid increase in hospital charges. (Excerpt of Record, hereinafter "Exc.," Vol. II., pp. 1, 2; Click affid.). The culmination of that effort was the creation of the Washington State Hospital Commission (hereinafter "Commission") in 1973.

A. The Statutory Purpose and Function of the Commission.

In creating the Commission, the legislature stated its intent as follows:

> "The primary purpose of this chapter is to promote the economic delivery of high quality and effective hospital health care services to the people by establishing a hospital commission with authority over financial disclosure and budget and prospective rate review and other related matters, which will assure all purchasers of hospital health care services that total hospital costs are reasonably related to total services, that hospital rates are reasonably related to aggregate costs, and that such rates are set equitably among all purchasers of these services without undue discrimination."
>
> Wash. Rev. Code § 70.39.010.[1]

At the time this lawsuit was filed, the Commission was composed of five members appointed by the governor, who were to be "* * * generally representative of the public as consumers, labor, business, and hospitals." Wash. Rev. Code § 70.39.030. The Commission has two related functions, viz. (1) establishing and supervising a system of financial disclosure by hospitals, and (2) developing and operating a system for establishing the rates which those hospitals may charge their patients.

Financial Disclosure

All hospitals are required to utilize the uniform system of accounting and financial reporting, as promulgated by the Commission, to record their revenues, expenses, other income, other outlays, assets and liabilities, and units of service. Wash. Rev. Code § 70.39.100. Each hospital must annually file with the Commission a balance sheet, statement of income and expenses, and other reports of the costs incurred in rendering services as prescribed by the Commission. Wash. Rev. Code § 70.39.110. Additionally, the Commission is to "* * * compile all relevant financial and accounting data in order to have available the statistical information necessary to properly conduct rate review and approval." Wash. Rev. Code § 70.39.150(1).

Rate Review and Approval

The Commission is required to review projected an-

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[1]This and all other references to the sections of chapter 70.39 Wash. Rev. Code are to those in effect in 1983, the year this action was filed.

nual revenues and to approve the reasonableness of rates proposed to generate that revenue.

No hospital may charge for services at rates other than those established by the Commission. Wash. Rev. Code § 70.39.140. All hospitals must file a schedule of rates, and the Commission is authorized to require amendments or modifications to that schedule where appropriate. Wash. Rev. Code § 70.39.150(1).

B. The System in Practice In General

After a hearing on a hospital's proposed budget, the Commission issues a decision and order setting the maximum total revenue a hospital may generate and the aggregate rate the hospital may utilize to generate that revenue. The hospital must then submit, for Commission approval, a schedule of the rates to be charged by each department for each type of service. This approval of the specific rate schedule is the end product of the Commission's entire review and approval process. (Exc., Vol. II., pp. 25, 26, 30, 31; Bensen dep.).

Contrary to the petitioner's assertion that the Commission "may order that a hospital delete certain expenses which it deems excessive" (Petition, p. 2), the Commission does not, and indeed statutorily cannot, determine the types or amounts of any reductions in expenditures which may be required by a reduction in allowable rates. (Exc., Vol. II., pp. 35-37; McCarthy dep.). Nor does the Commission direct the method by which a hospital may actually spend its approved revenue. (Exc. Vol. II., pp. 96-98; Bensen dep.). All those decisions are left entirely to hospital management. At year's end, the Commission reviews a hospital's operations only to ascertain whether a hospital has conformed to the Commission's order regarding total revenues and rates. (Exc., Vol. II., pp. 30-32; Bensen dep.; Exc., Vol. II., pp. 33, 34; Balestra dep.).

Evolution of the Guidelines

At the cessation of regulation of hospital costs by the

federal Cost of Living Council in April 1974, the Commission began a process leading to the full exercise of its statutory powers. (Exc., Vol. II., p. 3; Click affid.). Beginning October 1, 1975, all hospitals in the state were required to submit proposed budgets to the Commission for review. (Exc., Vol. II., pp. 3, 4; Click affid.). Budgets and other required reports were submitted by the hospitals in accordance with the uniform accounting and reporting system. (Exc., Vol. II., p. 3; Click affid.). The Commission in turn analyzed and categorized this financial information for the purpose of comparison with other hospitals. Hospitals were grouped with hospitals of similar size and characteristics ("peer groups") and according to geographic area ("regional screens"). The Commission then used this comparison of hospitals to identify areas of excessive cost increases. (Exc., Vol. II, pp. 5, 16; Bensen dep.).

In addition, the Commission adopted criteria for reviewing specific components of proposed budgets. In response to President Carter's request in 1978 for voluntary restraints in hospital costs, the Commission for the first time adopted a set of criteria for identifying excessive increases in specific components of proposed budgets. (Exc., Vol. II., pp. 19-22; Lobe memo.). The Commission referred to those criteria as "guidelines."

In 1982 the chairman of the Commission recognized that hospital costs were still rising much faster than the general rate of inflation. In recognition of the close relationship between rising rates and rising costs, he suggested that the Commission adopt rate-setting policies that would promote budget constraints and cost awareness. (Exc., Vol. II., p. 55; McCarthy memo, Oct. 5, 1982).

It was in this context that guidelines specifically focusing on wages and salaries were adopted. It is these guidelines that are here under challenge. Contrary to petitioner's suggestion that these guidelines were adopted "[a]gainst a backdrop of hospital industry wage negotiations * * *" (Petition, p. 3), the guidelines were instead a response to the phenomenon of rapidly escalating hospital rates and costs when the general rate of inflation was significantly falling.

The Commission derived the challenged guidelines from several sources, none of which reflected any bias toward labor or management. The Commission and staff relied on the Consumer Price Index (CPI), the "hospital market basket" published by the federal Health Care Financing Administration, a publication entitled "Rate Controls," and general news of increases granted in similar jobs. (Exc., Vol. II., pp. 76-79; Click dep.; Exc., Vol. II., pp. 80, 81; McCarthy dep.; Exc., Vol. II., p. 82; Bensen dep.).

Neither labor nor management played any role in the development of the challenged guidelines. Rather, they were purely the product of Commission action. The consumer representative, Chairman McCarthy, actually began the process in May 1982. Outside groups were not consulted. In fact, no effort was made to advise either unions or hospitals of their development. (Exc., Vol. II., pp. 38, 39; Click dep.). Hospitals were not required to provide any additional information. (Exc., Vol. II., pp. 40, 41; Click dep.). Hospitals and unions did not even learn of the guidelines until after they were developed, and, even then, there was no special announcement outside the Commission staff. (Exc., Vol. II., pp. 42, 43; Click dep.).

Prior to the adoption of the challenged guidelines, the practice of the Commission had been to treat wage contract increases as a "pass through" by automatically allowing them to be reflected in the hospital's rate structure. In 1982 the Commissioners realized that this policy needed to be changed. The Commission would no longer "rubber stamp" wage increases and pass on unreasonable increases to rate payers. (CR 42, Ex. 12, p. 13; McCarthy dep.).

The challenged guidelines thus represented an important change in Commission practice; hence the discussion of them by Commissioners and others at public meetings. The gist of the statements by Commissioners was that, as regulators of hospital rates, they would not feel bound to build into those rates wage increases that were unreasonable. (CR 42, Ex. 12, p. 13; McCarthy dep.). Wage increases would now be reviewed in light of inflation and other factors. Increases in excess of the guidelines would be passed through if the hospital were a relatively low cost hospital

as measured by other criteria, such as the "screens," or if the increases were otherwise justified. (CR 42, Ex. 12, p. 3, and Ex. 4; McCarthy dep.). For instance, where the hospital placed well in the peer screens, wage increases in excess of the guidelines were recommended by the staff and approved by the Commission. (CR 42, Ex. 11, p. 7; McCarthy dep.). Furthermore, Commissioners gave other examples of sufficient justification for deviation from the guidelines, such as increased productivity. (CR 42, Ex. 12, p. 9; Ex. 15, p. 3; McCarthy dep.).

Commissioners also noted publicly that they were not trying to focus only on wages and salaries. They were looking at increases in *all* costs. The guidelines for fiscal year 1984, for example, included detailed analyses of several factors in addition to wages and salaries, including professional fees, purchased services, supplies, food, utilities, interest, and capital. (CR 41, Ex. 5; Click dep.). Nevertheless, since wages and salaries comprise such a significant portion of operating expenses—between 55 and 60%—they warranted an especially close examination. (CR 42, Ex. 12, p. 3; Ex. 15, p. 2; McCarthy dep. *Cf.* Exc. Vol. II, p. 56 Click dep.).

The Commissioners' Hands-Off Approach Toward Wage Negotiations

To suggest that "the Commission used its budget procedures and its influence to coerce negotiators to settle labor contracts within the state guidelines" (Petition, p. 6), is simply incorrect. Quite to the contrary, the Commission deliberately refrained from becoming involved in wage negotiations. Although the Commission was asked by hospital representatives to take the initiative and become involved, by communicating directly to the Nurses Association its new policy of no longer allowing automatic pass through of wage increases, the Commission refused to do so. (CR 42, Ex. 12, p. 8; Ex. 15, p. 3; McCarthy dep.).

The Commission did not, on the other hand, in any way try to hide this new policy from the public. It was thoroughly discussed at meetings of the Commission, which were open to the public. And the Commission chair-

man did meet with representatives of the Nurses Association to discuss the Commission's role. (CR 42., Ex. 15, p. 3; McCarthy dep.).

More specifically:

> "On January 24, 1983, the Chairman and Executive Director met with representatives of the Washington State Nurses Association at their request. The WSNA indicated a concern about the Commission's emphasis on salary and wage increases and asked if the Commission intended to become parties to their negotiations. The Chairman stated that the Commission definitely did not intend to become parties to labor negotiations."

(Exc. Vol. II, p. 8, Click affid.).

C. History of These Proceedings

On August 17, 1983 the Washington State Nurses Association (hereinafter "petitioner" or "Association"), filed this action for declaratory and injunctive relief in the United States District Court, Western District of Washington. The case was tried before Judge Jack E. Tanner on a factual record stipulated by the parties. The record included a number of stipulated facts, affidavits, depositions, and deposition exhibits. (Exc., Vol. I., p. 25; Stip. & Order). No testimony was heard.

On July 27, 1984 the district court entered findings and conclusions to the effect that certain practices of the Commission conflicted with either the National Labor Relations Act, Title 29 U.S.C. § 157, and state law as found in chapter 41.56 Wash. Rev. Code. (Exc., Vol. I., p. 32; Conclusions of Law 3 & 4, Pet. D-7, D-8). The court entered a judgment ordering the Commission to cease and desist from any involvement in the collective bargaining process between the Association and regulated hospitals. (Exc., Vol. I., p. 28; Judgment, Pet. D-9).

The case was appealed to the United States Court of Appeals for the Ninth Circuit. The matter was argued and submitted May 9, 1985 before a panel in Seattle, Washington. On October 8, 1985 the court of appeals reversed the judgment of the district court.

THE COURT OF APPEALS' RESOLUTION OF THE PREEMPTION ISSUE IS CORRECT, IS NOT IN CONFLICT WITH ANY DECISIONS OF THIS COURT OR OTHER COURTS OF APPEAL, AND PRESENTS NO IMPORTANT QUESTION OF FEDERAL LAW WHICH NEED BE SETTLED BY THIS COURT.

We have described the statutory functions and actual operations of the Commission in some detail in order to clear away the factual misstatements and mischaracterizations contained in the Petitioner's Statement of the Case, and to put the Petitioner's arguments in their proper perspective.

The Petitioner argues that the Court of Appeals impermissibly substituted its own view of the facts for that of the District Court, and thereby violated FRCP 52 as construed in *Anderson v. Bessemer City,* 470 U.S. ___, 105 S.Ct. 1504 (1985). The problem with this argument, however, is that it is virtually impossible to determine with any precision what the District Court's own view of the facts actually was; for the Findings of Fact are full of vague suggestions rather than hard facts, much like the Petitioner's Statement of the Case.

To illustrate the problem, consider first Conclusion of Law No. 3, which states:

> "The practices of the Commission, as set forth in the Findings of Fact * * * conflict with that Act [the NLRA] and are illegal. * * * Congress has not elsewhere authorized states to influence and affect collective bargaining as the Commission has done here. For these reasons, the Commission's actions are pre-empted by Federal labor law." (Pet. D-7, D-8)

Also relevant here is the injunctive order, which states:

> "* * * Defendants shall forthwith cease and desist from any involvement in the collective bargaining process between the Washington State Nurses Association and those hospitals which are regulated by Defendants." (Pet. D-9)

Presumably this order encompasses any and all of the "practices" and "actions" previously declared illegal in

Conclusion of Law No. 3. And those practices, in turn, are the ones described in the Findings of Fact. (See Pet. D-1 through D-7). But when one turns to those Findings of Fact, it is impossible to find clear answers to questions such as the following:

(1) Is the Commission prohibited from engaging in any rate setting at all if—as is certainly the case—any such rate setting is likely to have an impact on the collective bargaining process?

(2) If the answer to the first question is "No", is the Commission nevertheless prohibited from making any judgment, in its operation of the rate-setting process, as to the reasonableness of various possible wage increases? Stated otherwise, is the Commission prohibited from doing anything other than automatically passing through into the rate structure any and all wage increases, however large they might be?

(3) If the answer to the second question is "No", are the members of the Commission nevertheless prohibited from discussing the Commission's policy and procedures regarding wage settlements at its public meetings?

In short, what precisely are the Commission actions which impermissibly "* * * 'interfere[d] with' and/or 'influence[d]' the outcome of collective bargaining," and which the Commission may no longer continue under the district court's ruling? (*Cf.* Finding of Fact No. 8, Pet. D-6).[2] Even the most careful reading of the Findings of Fact does not tell us.

There is a related problem, raised by Petitioner's reliance upon *Bessemer, supra.* Finding of Fact No. 8, combined with the statement in Conclusion of Law No. 3 that "[t]he Commission is not acting in a 'neutral' fashion as it seeks to adjust the interests of employers, unions, and employees in the collective bargaining area," seems to suggest that the Commission's decisions were motivated by some

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[2]As the Court of Appeals noted, "* * * the [district] court's findings did not identify specific practices to which it was referring." (Pet. A-4). Similarly, in the Petitioner's Statement of the Case, we find a similar vagueness and lack of record references. This makes the task of answering the Petition all the more difficult.

sort of bias or animus against employees and their unions, similar to the sexual bias involved in *Bessemer*. (See Petition pp. 4, 5).

But again, the suggestion is merely that, and not a clear ultimate finding of discriminatory intent similar to the finding in *Bessemer*. Further, even if the District Court's language in Conclusion of Law No. 3 is construed to constitute such a finding, it is not at all clear which actions of the Commission form the factual basis for that finding. The basis may simply be the Commission's decision to change its prior policy of allowing an automatic pass-through of any and all wage increases; or it may be something more. It is impossible to tell.

We turn, then, to what the Court of Appeals viewed — quite correctly, we believe — as the central issue in this case, viz., the "* * * Commission's use of the 'guidelines' to measure the reasonableness of wage increases as a component of the overall costs which the Commission permits to be reflected in the rates." (Pet. A-4). And on that issue, we need add little to the analysis of the Court of Appeals. (Pet. App. A).

Any system of rate setting, be it for hospitals, public utilities, or any other regulated business, inevitably produces a "tension", to use the term of the Court of Appeals, with the interest of that business's employees in bargaining for higher wages. (See Pet. A-1).

The Petitioner's major claim seems to be that the NLRA requires a rate-setting agency, such as the Hospital Commission, to eliminate that tension by allowing an automatic pass through of any and all wage increases. The challenge is thus directed to the use of *any* guidelines for wages and salaries, not just the particular guidelines adopted by the Commission in 1982.

This challenge, if successful, would require, of course, a jettisoning of any effective effort to control hospital rates.

Other than the District Court, which upheld the Petitioner's claim in this case, no court has gone to this extreme.

For example, in *Massachusetts Nursing Association*

v. Dukakis, 726 F.2d 41 (1st Cir. 1984), the Nursing Association challenged, on the grounds of preemption by the NLRA, a Massachusetts rate-setting system virtually identical to the Washington system challenged herein.[3] Both systems evaluated various categories of costs, including wage costs, and determined the extent to which those costs would or would not be allowed to be passed through into the rate structure.

In rejecting the preemption challenge, the Court of Appeals in *Dukakis* relied upon *Amalgamated Transit Union, Division 819 v. Byrne*, 568 F.2d 1025 (3d Cir. 1977) (*en banc*), in which the Third Circuit held that a state governor had not violated federal labor policy when he threatened to cut off state subsidies to any transit company that agreed with a union to include an open-ended cost of living increase provision in a labor agreement. The court below in the instant case relied squarely upon *Dukakis* and *Byrne*. (Pet. A-9, A-13).

Neither the Massachusetts Rate-Setting Commission involved in *Dukakis* nor the Washington State Hospital Commission, it should be emphasized, attempt to act as a kind of state counterpart to the now defunct federal Cost of Living Council. (See Economic Stabilization Act of 1970, P.L. 91-379, 84 Stat. 799). That is, the Commissions do not, and indeed cannot, approve or disapprove wage settlements or any other elements of a hospital's costs. The Commissions approve or disapprove only two things; the hospital's total revenue, and its schedule of rates for its patients.

The states, in short, control only the size of the pie; the employees are free to bargain for as large a slice as they wish.[4]

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[3]For a description of the Massachusetts system, see *Dukakis*, 726 F.2d at 45, 46.

[4]To deny the states this power to set rates, and to thereby control the total size of the pie, on the grounds that such power is preempted by the NLRA, would have troublesome implications. As stated by Judge Coffin in *Dukakis:*

> Finally, aside from precedent, deference, and the intent to be derived from federal legislative evolution, we sample the implications

The Petitioner asserts that the decision below — and presumably the decisions in *Dukakis* and *Byrne* as well — are in conflict with *General Electric Company v. Callahan*, 294 F.2d 60 (1st Cir. 1961), cert. dism. 369 U.S. 832 (1962) and *Oil, Chemical and Atomic Workers v. Arkansas Louisiana Gas Company*, 332 F.2d 64 (10th Cir. 1964).

In both of these cases, a state agency was authorized to engage in fact finding and the making of recommendations in order to establish the blame or responsibility in a labor dispute, and thus to coerce settlement of the dispute through the force of public opinion. The Courts of Appeal in both cases found this state intrusion into the collective bargaining process to be in violation of the federal labor policy embodied in the NLRA. No such state intrusion exists here. Hospitals and their employees are free to bargain just as they like, free of any state coercion or sanctions.

Petitioner also suggests that the issue involved in this case may be related to those which will be examined by this Court in *Golden State Transit Corp. v. City of Los Angeles*, 754 F.2d 830 (9th Cir. 1985), cert. granted June 17, 1985, and *Wisconsin Dept. of Industry v. Gould, Inc.*, 750 F.2d 608 (7th Cir. 1984), prob. juris. noted May 20, 1985.

Those cases, to be sure, present preemption claims under the NLRA; but that is the end of any similarity with this case. In *Golden State Transit*, the issue is whether a

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of appellant's reasoning. First of all, in any industry the price of whose product or service — such as electric power, telephone, natural gas, or even rent controlled real estate — is regulated, a state would find its regulatory system vulnerable to preemptive attack on the ground that the overall control of price was too inhibiting an influence on collective bargaining. Logic, however, would carry beyond simple price control. Any state or municipal program that substantially increased the costs of operation of a business in a competitive market would be similarly vulnerable to the preemption argument. Clean air and water laws, selective cutting requirements in forest operations, industrial safety standards, tax increases — all pro tanto hobble collective bargaining in that they constitute part of the universe in which collective bargaining takes place, just as do general prosperity or depression. But they do not add to or detract from the rights, practices, and procedures that together constitute our collective bargaining system. 726 F.2d at 45.

city's decision not to renew a taxi franchise because of a labor dispute between the franchisee and its employees constitutes an impermissible immersion in the collective bargaining process. An in *Gould*, the issue is whether a state may impose, for violations of the NLRA by an employer, its own additional sanctions upon that employer, by refusing to do business with him.

No such issues are presented here.

Finally, it should be noted that the guidelines at issue in this case are no longer in effect, having been superseded by formal rules adopted by the Commission on October 31, 1985. The rules provide a different method of projecting labor costs. The guidelines at issue here are thus no longer being used by the Commission. *See* Washington Administrative Code 261-40-150(5)(c)(ii).

CONCLUSION

For the reasons given above, the Petition for Certiorari should be denied.

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APPENDIX

(All statutory provisions are as in effect in 1983.)

RCW § 70.39.010 Purpose. The primary purpose of this chapter is to promote the economic delivery of high quality and effective hospital health care services to the people by establishing a hospital commission with authority over financial disclosure and budget and prospective rate review and other related matters, which will assure all purchasers of hospital health care services that total hospital costs are reasonably related to total services, that hospital rates are reasonably related to aggregate costs, and that such rates are set equitably among all purchasers of these services without undue discrimination.

The legislature finds and declares that rising hospital costs are a vital concern to the people of this state because of the danger which is posed that hospital and health care services are fast becoming out of the economic reach of the majority of our populations. It is further declared that health care is a right of the people and one of the primary purposes for which governments are established, and it is, therefore, essential that an effective cost control program be established which will both enable and motivate hospitals to control their spiraling costs. It is the legislative intent, in pursuance of this declared public policy, to provide for uniform measures on a state-wide basis to control hospital costs without the sacrifice of quality of service. [Wash. Rev. Code § 70.39.020.]

§ 70.30.030 Hospital commission—Created—Membership. There is hereby created a hospital commission, which shall be a separate and independent commission of the state. The commission shall be composed of five members appointed by the governor, and generally representative of the public as consumers, labor, business, and hospitals, and shall be individuals concerned with the delivery of quality health care; but in no event shall more than two members have any fiduciary obligation to a health facility or other health agency, nor any direct financial interest in the rendering of health services. In cases when proposed rate increases for osteopathic hos-

pitals are to be considered, the representative of osteopathic hospitals on the technical advisory committee shall replace a hospital representative on the commission. [Wash. Rev. Code § 70.39.030.]

§ 70.30.100 Uniform system of hospital accounting and reporting. (1) The commission, after study and in consultation with advisory committees, if any, shall establish by the promulgation of rules and regulations pursuant to the Administrative Procedure Act, chapter 34.04 RCW, a uniform system of accounting and financial reporting, including such cost allocation methods as it may prescribe, by which hospitals shall record their revenues, expenses, other income, other outlays, assets and liabilities, and units of service. All hospitals shall adopt the system for their fiscal year period to be effective at such time and date as the commission shall direct. * * * [Wash. Rev. Code § 70. 39.100.]

§ 70.39.110 Annual reports by hospitals. (1) Each hospital shall file annually with the commission after the close of the fiscal year:

(a) A balance sheet detailing the assets, liabilities, and net worth of the hospital;

(b) A statement of income and expenses;

(c) Such other reports of the costs incurred in rendering services as the commission may prescribe.

(2) Where more than one licensed hospital is operated by the reporting organization, the information required by this section shall be reported for each hospital separately.

(3) The commission shall require certification of specified financial reports by the hospital's certified public accountant, and may require attestation as to such statements from responsible officials of the hospital that such reports have to the best of their knowledge and belief been prepared in accordance with the prescribed system of accounting and reporting.

(4) All reports, except privileged medical information, filed under this chapter shall be open to public inspection.

(5) The commission shall have the right of inspection of hospital books, audits, and records as reasonably necessary to verify hospital reports. [Wash. Rev. Code § 70.39.110.]

§ 70.30.140 Hospital rates—Review and investigation—Costs—Establishment of rates—Coordination with federal programs. From and after a date of less than twelve months but not more than twenty-four months after the adoption of the uniform system of accounting and financial reporting required by RCW 70.39.100, as the commission may direct, the commission shall have the power to initiate such reviews or investigations as may be necessary to assure all purchasers of hospital health care services that the total costs of a hospital are reasonably related to the total services offered by that hospital, that the hospital's aggregate revenues as expressed by rates are reasonably related to the hospital's aggregate costs; and that rates are set equitably among all purchasers or classes of purchasers of services without undue discrimination or preference.

In order to properly discharge these obligations, the commission shall have full power to review projected annual revenues and approve the reasonableness of rates proposed to generate that revenue established or requested by any hospital subject to the provisions of this chapter. No hospital shall charge for services at rates other than those established in accordance with the procedures established hereunder.

In the interest of promoting the most efficient and effective use of hospital health care service, the commission may promote and approve alternative methods of rate determination and payment of an experimental nature that may be in the public interest and consistent with the purposes of this chapter.

The commission shall serve as the state agency responsible for coordinating state actions and otherwise responding and relating to the efforts of the cost of living council, or its successor, in planning and implementing federal cost containment programs with respect to hospi-

tals and related health care institutions as authorized by the Federal Economic Stabilization Act of 1970, as now or hereafter amended, and any rules or regulations promulgated thereto. In carrying out this responsibility, the commission may serve as the state agency responsible for recommending increases in rates for hospitals and related health care institutions to the cost of living council, or its successor; may apply to the cost of living council for authorization to administer a control program in Washington state in lieu of the federal controls established and otherwise administered by the cost ofliving council; may assume another function or role authorized by appropriate federal regulations implementing the Federal Economic Stabilization Act of 1970; or assume any combination of such roles or functions as it may determine will most effectively contain the rising costs of the varying kinds of hopsitals and related health care institutions in Washington state. In determining its functions or roles in relation to the efforts to the cost of living council, or its successor, the commission shall seek to ensure coordination, and the reduction of duplicatory cost containment efforts, by the state and federal governments, as well as the diligent fulfillment of the purposes of this chapter and declared public policy and legislative intent herein: *Provided, However,* That in cases where the rates of nursing homes or similar health institutions are subject to review pursuant to the provisions of the Federal Economic Stabilization Act of 1970 or any rules or regulations promulgated thereto, the members of the commission representing hospitals shall not sit in the proceedings nor vote, and the governor shall appoint an ad hoc member representing nursing homes or similar health institutions in lieu thereof, who shall have the same powers as the other members with respect to such review only. [Wash. Rev. Code § 70.39.140.]

§ 70.39.150 Powers and duties of commission. To properly carry out its authority the commission shall:

(1) Compile all relevant financial and accounting data in order to have available the statistical information

necessary to properly conduct rate review and approval. Such data shall include necessary operating expenses, appropriate expenses incurred for rendering services to patients who cannot or do not pay, all, properly incurred interest charges, and reasonable depreciation expenses based on the expected useful life of the property and equipment involved. The commission shall define and prescribe by rule and regulation the types and classes of charges which cannot be changed except as provided by the procedure contained in RCW 70.39.160 and it shall also obtain from each such hospital a current rate schedule as well as any subsequent amendments or modifications of that schedule as it may require.

(2) Permit any nonprofit hospital subject to the provisions of this chapter to charge reasonable rates which will permit the hospital to render effective and efficient service in the public interest and on a solvent basis.

(3) Permit any proprietary profit-making hospital subject to the provisions of this chapter to charge reasonable rates which will permit the hospital to render effective and efficient service in the public interest and which includes an allowance for the fair return to stockholders based upon actual investment or, if the hospital elects, upon the fair value of the investment on the effective date of this section: *Provided,* That once the election is made it may not be changed without the approval of the commission.

(4) Take into account, in the determination of reasonable rates under this section for each hospital, the recommendations of appropriate area-wide and state comprehensive health planning agencies to ensure compliance with Washington comprehensive health planning law, chapter 70.38 RCW.

(5) Permit, in considering a request for change in or initiating a review of rate schedules or other charges, any hospital subject to the provisions of this chapter to charge rates which will in the aggregate produce sufficient total revenue for the hospital to meet all of the reasonable obligations specified in this chapter. [Wash. Rev. Code § 70.39.150.]

§ 70.39.160 Changes in rates—Procedure. From and after the date determined by the commission pursuant to RCW 70.39.140, no hospital subject to the provisions of this chapter shall change or amend that schedule of rates and charges of the type and class which cannot be changed without prior approval of the commission, except in accordance with the following procedure:

(1) Any request for a change in rate schedules or other charges must be filed in writing in the form and content prescribed by the commission and with such supporting data as the hospital seeking the change deems appropriate. Unless the commission orders otherwise provided for in subsection (4) of this section, no hospital shall establish such changes except after notice to the commission of at least thirty days from the time the rate is intended to go into effect. Upon receipt of notice, the commission may suspend the effective date of any proposed change. In any such case a formal written statement of the reasons for the suspension will be promptly submitted to the hospital. Unless suspended, any proposed change shall go into effect upon the date specified in the application.

(2) In any case where such action is deemed necessary, the commission shall promptly, but in any event within thirty days, institute proceedings as to the reasonableness of the proposed changes. The suspension may extend for a period of not more than thirty days beyond the date the change would otherwise go into effect: *Provided,* That should it be necessary, the commission may extend the suspension for an additional thirty days. After the expiration of ninety days from the date the rate is intended to go into effect the new rate will go into effect, if the commission does not approve, disapprove, or modify the request by that time.

(3) Such proposed changes shall be considered at a public hearing, the time and place of which shall be determined by the commission. The hearing shall be conducted by the commission. Evidence for and against the requested change may be introduced at the time of the hearing by any interested party and witnesses may be heard. The

hearing may be conducted without compliance with formal rules of evidence.

(4) The commission may, in its discretion, permit any hospital to make a temporary change in rates which shall be effective immediately upon filing and in advance of any review procedure when it deems it in the public interest to do so. Notwithstanding such temporary change in rates, the review procedures set out in this section shall be conducted by the commission as soon thereafter as is practicable.

(5) Every decision and order of the commission in any contested proceeding shall be in writing and shall state the grounds for the commission's conclusions. The effects of such orders shall be prospective in nature. [Wash. Rev. Code § 70.39.160.]

§ 70.39.200 Penalties for violations. Every person who shall violate or knowingly aid and abet the violation of this chapter or any valid orders, rules, or regulations thereunder, or who fails to perform any act which it is herein made his duty to perform shall be guilty of a misdemeanor. Following official notice to the accused by the commission of the existence of an alleged violation, each day upon which a violation occurs shall constitute a separate violation. Any person violating the provisions of this chapter may be enjoined from continuing such violation. [Wash. Rev. Code § 70.39.200.]